

STATEMENT UNDER 37 CFR 3.73(b)

Applicant: James Kleinstein

Application No.: 10/062,853

Filed: 1/31/2002

Entitled: Node and Port Authentication in a Fibre Channel Network

Brocade Communications Systems, Inc., a Delaware corporation

(Name of Assignee)

(Type of Assignee, e.g., corporation, partnership, university, government agency, etc.)

states that it is:

1. ☒ the assignee of the entire right, title, and interest; or
2. ☐ an assignee of an undivided part interest

in the patent application identified above by virtue of either:

- A. ☒ An assignment from the inventor(s) of the patent application identified above. The assignment was recorded in the Patent and Trademark Office at Reel _____, Frame _____, or for which a copy thereof is attached.

OR

- B. ☐ A chain of title from the inventor(s), of the patent application identified above, to the current assignee as shown below:

1. From: _____ To: _____
The document was recorded in the Patent and Trademark Office at
Reel _____, Frame _____, or for which a copy thereof is attached.
2. From: _____ To: _____
The document was recorded in the Patent and Trademark Office at
Reel _____, Frame _____, or for which a copy thereof is attached.
3. From: _____ To: _____
The document was recorded in the Patent and Trademark Office at
Reel _____, Frame _____, or for which a copy thereof is attached.

☐ Additional documents in the chain of title are listed on a supplemental sheet.

☐ Copies of assignments or other documents in the chain of title are attached.

The undersigned (whose title is supplied below) is empowered to sign this statement on behalf of the assignee.

3/19/02
Date

[Signature]
Signature

Ronald Epstein

Typed or printed name

Vice President and General Counsel

Title

ASSIGNMENT

For good and valuable consideration, the receipt of which is hereby acknowledged, the person(s) named below (referred to as "INVENTOR" whether singular or plural) has sold, assigned, and transferred and does hereby sell, assign, and transfer to Brocade Communications Systems, Inc., a Delaware corporation, having a place of business at 1745 Technology Drive, San Jose, California 95110 ("ASSIGNEE"), for itself and its successors, transferees, and assignees, the following:

The entire worldwide right, title, and interest in all inventions and improvements ("SUBJECT MATTER") that are disclosed in the application for United States Letters Patent entitled: NODE AND PORT AUTHENTICATION IN A FIBRE CHANNEL NETWORK ("APPLICATION"), which:

- ☐ is to be filed herewith
- ☒ was filed on January 31, 2002, now bearing U.S. Serial Number 10/062,853 and for which a Declaration was executed by INVENTOR on the date(s) below; and

The entire worldwide right, title, and interest in and to (a) the APPLICATION, including any right of priority; (b) any divisional, continuation, substitute, renewal, reissue, and other related applications thereto which have been or may be filed in the United States or elsewhere in the world; and (c) patents which may be granted on the applications set forth in (a) and (b) above.

INVENTOR agrees that ASSIGNEE may apply for and receive patents for SUBJECT MATTER in ASSIGNEE's own name.

INVENTOR agrees to do the following, when requested, and without further consideration, in order to carry out the intent of this Assignment: (1) execute all oaths, assignments, powers of attorney, applications, and other papers necessary or desirable to fully secure to ASSIGNEE the rights, titles, and interests herein conveyed; (2) communicate to ASSIGNEE all known facts relating to the SUBJECT MATTER; and (3) generally do all lawful acts that ASSIGNEE shall consider desirable for securing, maintaining, and enforcing worldwide patent protection relating to the SUBJECT MATTER and for vesting in ASSIGNEE the rights, titles, and interests herein conveyed. INVENTOR further agrees to provide any successor, assign, or legal representative of ASSIGNEE with the benefits and assistance provided to ASSIGNEE hereunder.

INVENTOR represents that INVENTOR has the rights, titles, and interests to convey as set forth herein, and covenants with ASSIGNEE that the INVENTOR has made or will make hereafter no assignment, grant, mortgage, license, or other agreement affecting the rights, titles, and interests herein conveyed.

This Assignment may be executed in one or more counterparts, each of which shall be deemed an original and all of which may be taken together as one and the same Assignment.

Executed this 16th day of May, 2002.

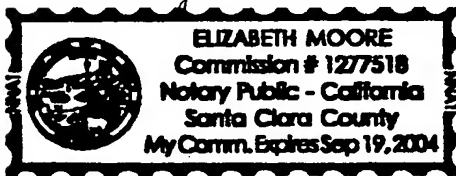
James Kleinstein
James Kleinstein

STATE OF CALIFORNIA

COUNTY OF Santa Clara

BEFORE ME, the undersigned authority, on this day personally appeared James Kleinstein, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and consideration herein expressed.

GIVEN UNDER MY HAND and seal of office this 16th day of May, 2002.



Elizabeth Moore
Notary Public in and for the
State of California

Executed this 16th day of May, 2002.

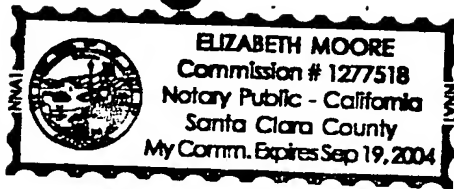
Richard L. Hammons
Richard L. Hammons

STATE OF CALIFORNIA

COUNTY OF Santa Clara

BEFORE ME, the undersigned authority, on this day personally appeared Richard L. Hammons, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and consideration herein expressed.

GIVEN UNDER MY HAND and seal of office this 16th day of May, 2002.



Elizabeth Moore
Notary Public in and for the
State of California

Executed this 16th day of May, 2002.

Dilip Gunawardena

STATE OF CALIFORNIA

COUNTY OF _____

BEFORE ME, the undersigned authority, on this day personally appeared Dilip Gunawardena, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and consideration herein expressed.

GIVEN UNDER MY HAND and seal of office this ____ day of _____, 2002.

Notary Public in and for the
State of California

Executed this 16th day of May, 2002.

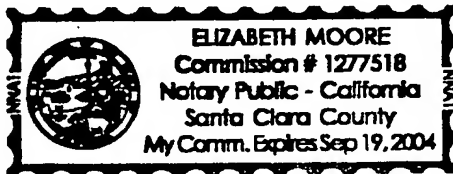
Shankar Balasubramanian

STATE OF CALIFORNIA

COUNTY OF Santa Clara

BEFORE ME, the undersigned authority, on this day personally appeared Shankar Balasubramanian, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same for the purposes and consideration herein expressed.

GIVEN UNDER MY HAND and seal of office this 16th day of May, 2002.



Elizabeth Moore
Notary Public in and for the
State of California

EMPLOYMENT, CONFIDENTIAL INFORMATION,
INVENTION ASSIGNMENT,
NON-COMPETITION
AND ARBITRATION AGREEMENT

As a condition of my employment with BROCADE COMMUNICATIONS SYSTEMS, INC. its subsidiaries, affiliates, successors or assigns (together the "Company"), and in consideration of my employment with the Company and my receipt of the compensation now and hereafter paid to me by Company, I agree to the following:

1. **At-Will Employment.** I UNDERSTAND AND ACKNOWLEDGE THAT MY EMPLOYMENT WITH THE COMPANY IS FOR AN UNSPECIFIED DURATION AND CONSTITUTES "AT-WILL" EMPLOYMENT. I ALSO UNDERSTAND THAT ANY REPRESENTATION TO THE CONTRARY IS UNAUTHORIZED AND NOT VALID UNLESS OBTAINED IN WRITING AND SIGNED BY THE PRESIDENT OF THE COMPANY. I ACKNOWLEDGE THAT THIS EMPLOYMENT RELATIONSHIP MAY BE TERMINATED AT ANY TIME, WITH OR WITHOUT GOOD CAUSE OR FOR ANY OR NO CAUSE, AT THE OPTION EITHER OF THE COMPANY OR MYSELF, WITH OR WITHOUT NOTICE.

2. **Confidential Information.**

(a) **Company Information.** I agree at all times during the term of my employment and thereafter, to hold in strictest confidence, and not to use, except for the benefit of the Company, or to disclose to any person, firm or corporation without written authorization of the Board of Directors of the Company, any Confidential Information of the Company. I understand that "Confidential Information" means any Company proprietary information, technical data, trade secrets or know-how, including, but not limited to, research, product plans, products, services, customer lists and customers (including, but not limited to, customers of the Company on whom I called or with whom I became acquainted during the term of my employment), markets, software, developments, inventions, processes, formulas, technology, designs, drawings, engineering, hardware configuration information, marketing, finances or other business information disclosed to me by the Company either directly or indirectly in writing, orally or by drawings or observation of parts or equipment. I further understand that Confidential Information does not include any of the foregoing items which has become publicly known and made generally available through no wrongful act of mine or of others who were under confidentiality obligations as to the item or items involved or improvements or new versions thereof.

(b) **Former Employer Information.** I agree that I will not, during my employment with the Company, improperly use or disclose any proprietary information or trade secrets of any former or concurrent employer or other person or entity and that I will not bring onto the premises of the Company any unpublished document or proprietary information belonging to any such employer, person or entity unless consented to in writing by such employer, person or entity.

(c) **Third Party Information.** I recognize that the Company has received and in the future will receive from third parties their confidential or proprietary information subject to a duty on the Company's part to maintain the confidentiality of such information and to use it only for certain limited purposes. I agree to hold all such confidential or proprietary information in the strictest confidence and not to disclose it to any person, firm or corporation or to use it except as necessary in carrying out my work for the Company consistent with the Company's agreement with such third party.

3. **Inventions.**

(a) **Inventions Retained and Licensed.** I have attached hereto, as Exhibit A, a list describing all inventions, original works of authorship, developments, improvements, and trade secrets which were made by me prior to my employment with the Company (collectively referred to as "Prior Inventions"), which belong to me, which relate to the Company's proposed business, products or research and development, and which are not assigned to the Company hereunder; or, if no such list is attached, I represent that there are no such Prior Inventions. If in the course of my employment with the Company, I incorporate into a Company product, process or machine a Prior Invention owned by me or in which I have an interest, the Company is hereby granted and shall have a nonexclusive, royalty-free, irrevocable, perpetual, worldwide license to make, have made, modify, use and sell such Prior Invention as part of or in connection with such product, process or machine.

(b) **Assignment of Inventions.** I agree that I will promptly make full written disclosure to the Company, will hold in trust for the sole right and benefit of the Company, and hereby assign to the Company, or its designee, all my right, title, and interest in and to any and all inventions, original works of authorship, developments, concepts, improvements, designs, discoveries, ideas, trademarks or trade secrets, whether or not patentable or registrable under copyright or similar laws, which I may solely or

jointly conceive or develop or reduce to practice, or cause to be conceived or developed, reduced to practice, during the period of time I am in the employ of the Company, (collectively referred to as "Inventions"), except as provided in Section 3(f) below. I further acknowledge that all original works of authorship which are made by me (solely or jointly with others) within the scope of and during the period of my employment with the Company and which are protectible by copyright are "works made for hire," as that term is defined in the United States Copyright Act. I understand and agree that the decision whether or not to commercialize or market any invention developed by me solely or jointly with others is within the Company's sole discretion and for the Company's sole benefit and that no royalty will be due to me as a result of this invention, or the Company's efforts to commercialize or market any such invention.

(c) **Inventions Assigned to the United States.** I agree to assign to the United States government all my right, title, and interest in and to any and all Inventions whenever such full title is required to be in the United States by a contract between the Company and the United States or any of its agencies.

(d) **Maintenance of Records.** I agree to keep and maintain adequate and current written records of all Inventions made by me (solely or jointly with others) during the term of my employment with the Company. The records will be in the form of notes, sketches, drawings, laboratory notebooks, and any other format that may be specified by the Company. The records will be available to and remain the sole property of the Company at all times.

(e) **Patent and Copyright Registrations.** I agree to assist the Company, or its designee, at the Company's expense, in every proper way to secure and protect the Company's rights in the Inventions and any copyrights, patents, mask work rights or other intellectual property rights relating thereto in any and all countries, including the disclosure to the Company of all pertinent information and data with respect thereto, the execution of all applications, specifications, oaths, assignments and all other instruments which the Company shall deem necessary in order to apply for and obtain such rights and in order to assign and convey to the Company, its successors, assigns, and nominees the sole and exclusive rights, title and interest in and to such Inventions, and any copyrights, patents, mask work rights or other intellectual property rights relating thereto. I further agree that my obligation to execute or cause to be executed, when it is in my power to do so, any such instrument or papers shall continue after the termination of this Agreement. If the Company is unable because of my mental or physical incapacity or for any other reason to secure my signature to apply for or to pursue any application for any United States or foreign patents or copyright registrations covering Inventions or original works of authorship assigned to the Company as above, then I hereby irrevocably designate and appoint the Company and its duly authorized officers and agents as my agent and attorney in fact, to act for and in my behalf and stead to execute and file any such applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent or copyright registrations thereon with the same legal force and effect as if executed by me.

(f) **Exception to Assignments.** I understand that the provisions of this Agreement requiring assignment of Inventions to the Company do not apply to any invention which qualifies fully under the provisions of California Labor Code Section 2870 (attached hereto as Exhibit B). I will advise the Company promptly in writing of any inventions that I believe meet the criteria in California Labor Code Section 2870 and not otherwise disclosed on Exhibit A.

4. **Conflicting Employment.** I agree that, during the term of my employment with the Company, I will not engage in any other employment, occupation, consulting or other business activity directly related to the business in which the Company is now involved or becomes involved during the term of my employment, nor will I engage in any other activities that conflict with my obligations to the Company.

5. **Returning Company Documents.** I agree that, at the time of leaving the employ of the Company, I will deliver to the Company (and will not keep in my possession, recreate or deliver to anyone else) any and all devices, records, data, notes, reports, proposals, lists, correspondence, specifications, drawings blueprints, sketches, materials, equipment, other documents or property, or reproductions of any aforementioned items developed by me pursuant to my employment with the Company or otherwise belonging to the Company, its successors or assigns, including, without limitation, those records maintained pursuant to paragraph 3(d). In the event of the termination of my employment, I agree to sign and deliver the "Termination Certification" attached hereto as Exhibit C.

6. **Notification of New Employer.** In the event that I leave the employ of the Company, I hereby grant consent to notification by the Company to my new employer about my rights and obligations under this Agreement.

7. **Solicitation of Employees.** I agree that for a period of twelve (12) months immediately following the termination of my relationship with the Company for any reason, whether with or without cause, I shall not either directly or indirectly solicit, induce, recruit or encourage any of the Company's employees to leave their employment, or take away such employees, or attempt to solicit, induce, recruit, encourage or take away employees of the Company, either for myself or for any other person or entity.

8. **Conflict of Interest Guidelines.** I agree to diligently adhere to the Conflict of Interest Guidelines attached as Exhibit D hereto.

9. **Non-Competition Guidelines.** In order to protect the confidentiality of the information described in Section 2, any departing employee agrees that, for a period of six months immediately following the employee's termination of employment with the Company, he or she may not perform services or receive compensation from (i) a client of the Company or (ii) from a company with whom the Company has had a meeting to discuss the possibility of that company becoming a client within six months prior to the employee's termination of employment with the Company.

10. **Compensation for Services; Disclosure of Investments.**

(a) All compensation for services, including equity or equity-type payments, and consulting or advisory fees, shall be paid to the Company unless otherwise unanimously approved by the Board of Directors.

(b) Any compensation received by a Shareholder from a company in which any of the Company's shareholders is an investor must be disclosed to the Board of Directors of the Company.

(c) Any private investments made by a Shareholder, other than an investment in real estate, must be disclosed to the Board of Directors of the Company.

11. **Representations.** I agree to execute any proper oath or verify any proper document required to carry out the terms of this Agreement. I represent that my performance of all the terms of this Agreement will not breach any agreement to keep in confidence proprietary information acquired by me in confidence or in trust prior to my employment by the Company. I have not entered into, and I agree I will not enter into, any oral or written agreement in conflict herewith.

12. **Arbitration and Equitable Relief.**

(a) **Arbitration.** EXCEPT AS PROVIDED IN SECTION 10(b) BELOW, I AGREE THAT ANY DISPUTE OR CONTROVERSY ARISING OUT OF, RELATING TO, OR CONCERNING ANY INTERPRETATION, CONSTRUCTION, PERFORMANCE OR BREACH OF THIS AGREEMENT, SHALL BE SETTLED BY ARBITRATION TO BE HELD IN SANTA CLARA COUNTY, CALIFORNIA, IN ACCORDANCE WITH THE EMPLOYMENT DISPUTE RESOLUTION RULES THEN IN EFFECT OF THE AMERICAN ARBITRATION ASSOCIATION. THE ARBITRATOR MAY GRANT INJUNCTIONS OR OTHER RELIEF IN SUCH DISPUTE OR CONTROVERSY. THE DECISION OF THE ARBITRATOR SHALL BE FINAL, CONCLUSIVE AND BINDING ON THE PARTIES TO THE ARBITRATION. JUDGMENT MAY BE ENTERED ON THE ARBITRATOR'S DECISION IN ANY COURT HAVING JURISDICTION. THE COMPANY AND I SHALL EACH PAY ONE-HALF OF THE COSTS AND EXPENSES OF SUCH ARBITRATION, AND EACH OF US SHALL SEPARATELY PAY OUR COUNSEL FEES AND EXPENSES. THIS ARBITRATION CLAUSE CONSTITUTES A WAIVER OF EMPLOYEE'S RIGHT TO A JURY TRIAL AND RELATES TO THE RESOLUTION OF ALL DISPUTES RELATING TO ALL ASPECTS OF THE EMPLOYER/EMPLOYEE RELATIONSHIP (EXCEPT AS PROVIDED IN SECTION 10(b) BELOW), INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING CLAIMS:

i. ANY AND ALL CLAIMS FOR WRONGFUL DISCHARGE OF EMPLOYMENT; BREACH OF CONTRACT, BOTH EXPRESS AND IMPLIED; BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING, BOTH EXPRESS AND IMPLIED; NEGLIGENCE OR INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS; NEGLIGENCE OR INTENTIONAL MISREPRESENTATION; NEGLIGENCE OR INTENTIONAL INTERFERENCE WITH CONTRACT OR PROSPECTIVE ECONOMIC ADVANTAGE; AND DEFAMATION;

ii. ANY AND ALL CLAIMS FOR VIOLATION OF ANY FEDERAL, STATE OR MUNICIPAL STATUTE, INCLUDING, BUT NOT LIMITED TO, TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, THE CIVIL RIGHTS ACT OF 1991, THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967, THE AMERICANS WITH DISABILITIES ACT OF 1990, THE FAIR LABOR STANDARDS ACT, THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT, AND LABOR CODE SECTION 201, et seq.;

iii. ANY AND ALL CLAIMS ARISING OUT OF ANY OTHER LAWS AND REGULATIONS RELATING TO EMPLOYMENT OR EMPLOYMENT DISCRIMINATION.

(b) **Equitable Remedies.** I AGREE THAT IT WOULD BE IMPOSSIBLE OR INADEQUATE TO MEASURE AND CALCULATE THE COMPANY'S DAMAGES FROM ANY BREACH OF THE COVENANTS SET FORTH IN SECTIONS 2, 3, AND 5 HEREIN. ACCORDINGLY, I AGREE THAT IF I BREACH ANY OF SUCH SECTIONS, THE COMPANY WILL HAVE AVAILABLE, IN ADDITION TO ANY OTHER RIGHT OR REMEDY AVAILABLE, THE RIGHT TO OBTAIN AN INJUNCTION FROM A COURT OF COMPETENT JURISDICTION RESTRAINING SUCH BREACH OR THREATENED BREACH AND TO SPECIFIC PERFORMANCE OF ANY SUCH PROVISION OF THIS AGREEMENT. I FURTHER AGREE THAT NO BOND OR OTHER SECURITY SHALL BE REQUIRED IN OBTAINING SUCH EQUITABLE

RELIEF AND I HEREBY CONSENT TO THE ISSUANCE OF SUCH INJUNCTION TO THE ORDERING OF SPECIFIC PERFORMANCE.

(c) Consideration. I UNDERSTAND THAT EACH PARTY'S PROMISE TO RESOLVE CLAIMS BY ARBITRATION IN ACCORDANCE WITH THE PROVISIONS OF THIS AGREEMENT, RATHER THAN THROUGH THE COURTS, IS CONSIDERATION FOR OTHER PARTY'S LIKE PROMISE. I FURTHER UNDERSTAND THAT I AM OFFERED EMPLOYMENT IN CONSIDERATION OF MY PROMISE TO ARBITRATE CLAIMS.

13. General Provisions.

(a) Governing Law; Consent to Personal Jurisdiction. This Agreement will be governed by the laws of the State of California. I hereby expressly consent to the personal jurisdiction of the state and federal courts located in California for any lawsuit filed there against me by the Company arising from or relating to this Agreement.

(b) Entire Agreement. This Agreement sets forth the entire agreement and understanding between the Company and me relating to the subject matter herein and supersedes all prior discussions between us. No modification of or amendment to this Agreement, nor any waiver of any rights under this agreement, will be effective unless in writing signed by the party to be charged. Any subsequent change or changes in my duties, salary or compensation will not affect the validity or scope of this Agreement.

(c) Severability. If one or more of the provisions in this Agreement are deemed void by law, then the remaining provisions will continue in full force and effect.

(d) Successors and Assigns. This Agreement will be binding upon my heirs, executors, administrators and other legal representatives and will be for the benefit of the Company, its successors, and its assigns.

Date: November 17, 2000

Dilip Gunawardena

Signature

DILIP GUNAWARDENA

Name of Employee (typed or printed)

Witness

Schaffer

Exhibit A

LIST OF PRIOR INVENTIONS
AND ORIGINAL WORKS OF AUTHORSHIP

Title	Date	Identifying Number or Brief Description
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☐ No inventions or improvements
☐ Additional Sheets Attached

Signature of Employee: _____
Print Name of Employee: _____
Date: _____

Dilip Gunawardena

DILIP GUNAWARDENA

November 17, 2000

Exhibit B

**CALIFORNIA LABOR CODE SECTION 2870
INVENTION ON OWN TIME - EXEMPTION FROM AGREEMENT**

"(a) Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either:

(1) Relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer; or

(2) Result from any work performed by the employee for the employer.

(b) To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable."

Exhibit C

BROCADE COMMUNICATIONS SYSTEMS, INC.

TERMINATION CERTIFICATION

This is to certify that I do not have in my possession, nor have I failed to return, any devices, records, data, notes, reports, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, materials, equipment, computer source code, other documents or property, or reproductions of any aforementioned items belonging to BROCADE COMMUNICATIONS SYSTEMS, INC., its subsidiaries, affiliates, successors or assigns (together, the "Company").

I further certify that I have complied with all the terms of the Company's Employment, Confidential Information, Invention Assignment and Arbitration Agreement signed by me, including the reporting of any inventions and original works of authorship (as defined therein), conceived or made by me (solely or jointly with others) covered by that agreement.

I further agree that, in compliance with the Employment, Confidential Information, Invention Assignment, and Arbitration Agreement, I will preserve as confidential all trade secrets, confidential knowledge, data or other proprietary information relating to products, processes, know-how, designs, formulas, developmental or experimental work, computer programs, data bases, other original works of authorship, customer lists, business plans, financial information or other subject matter pertaining to any business of the Company or any of its employees, clients, consultants or licensees.

I further agree that for twelve (12) months from this date, I will not hire any employees of the Company and I will not solicit, induce, recruit or encourage any of the Company's employees to leave their employment.

Date: _____

(Employee's Signature)

(Type/Print Employee's Name)

Exhibit D

BROCADE COMMUNICATIONS SYSTEMS, INC.

CONFLICT OF INTEREST GUIDELINES

It is the policy of BROCADE COMMUNICATIONS SYSTEMS, INC. to conduct its affairs in strict compliance with the letter and spirit of the law and to adhere to the highest principles of business ethics. Accordingly, all officers, employees and independent contractors must avoid activities which are in conflict, or give the appearance of being in conflict, with these principles and with the interests of the Company. The following are potentially compromising situations which must be avoided. Any exceptions must be reported to the President and written approval for continuation must be obtained.

1. Revealing confidential information to outsiders or misusing confidential information. Unauthorized divulging of information is a violation of this policy whether or not for personal gain and whether or not harm to the Company is intended or occurs. (The Employment, Confidential Information, Invention Assignment and Arbitration Agreement elaborates on this principle and is a binding agreement.)
2. Accepting or offering substantial gifts, excessive entertainment, favors or payments which may be deemed to constitute undue influence or otherwise be improper or embarrassing to the Company.
3. Participating in civic or professional organizations that might involve divulging confidential information of the Company.
4. Initiating or approving personnel actions affecting reward or punishment of employees or applicants where there is a family relationship or is or appears to be a personal or social involvement.
5. Initiating or approving any form of personal or social harassment of employees.
6. Investing or holding outside directorship in suppliers, customers, or competing companies, including financial speculations, where such investment or directorship might influence in any manner a decision or course of action of the Company.
7. Borrowing from or lending to employees, customers or suppliers.
8. Acquiring real estate of interest to the Company.
9. Improperly using or disclosing to the Company any proprietary information or trade secrets of any former or concurrent employer or other person or entity with whom obligations of confidentiality exist.
10. Unlawfully discussing prices, costs, customers, sales strategies, or markets with competing companies or their employees.
11. Making any unlawful agreement with distributors with respect to prices.
12. Improperly using or authorizing the use of any inventions which are the subject of patent claims of any other person or entity.
13. Engaging in any conduct which is not in the best interest of the Company.

Each officer, employee and independent contractor must take every necessary action to ensure compliance with these guidelines and to bring problem areas to the attention of higher management for review. Violations of this conflict of interest policy may result in discharge without warning.



Counselors in Intellectual Property

Lou Brucculeri
Direct: 832-446-2415
lbrucculeri@counselip.com

**COPY OF PAPERS
ORIGINALLY FILED**

April 17, 2002

VIA FEDEX

Dilip Gunawardena
872 Newport Circle
Redwood Shores, CA 94065-1915

Re: Letter Agreement

Dear Mr. Gunawardena:

The attached letter is the one we discussed yesterday. We read it together yesterday and incorporated your edits because it is intended to confirm your offer to Brocade. I will speak to the appropriate people at Brocade and get back to you with a response shortly.

Very truly yours,

Lou Brucculeri

Cc: Brocade Law Department

Wong, Cabello, Lutsch, Rutherford & Brucculeri, P.C.

20333 SH 249 • Suite 600 • Houston, Texas 77070
832.446.2400 • 832.446.2424 Fax • www.CounselIP.com



Counselors in Intellectual Property

Lou Brucculeri
Direct: 832-446-2415
lbrucculeri@counselip.com

April 17, 2002

VIA FEDEX

Dilip Gunawardena
872 Newport Circle
Redwood Shores, CA 94065-1915

Re: Letter Agreement

Dear Mr. Gunawardena:

This is a letter to follow-up on our conversation of Tuesday April 16, 2002 and confirm your request for compensation in exchange for your provision of expertise regarding patent applications for which you are an inventor. Specifically, we were discussing two Brocade patent applications that include claims comprising aspects of a port authentication invention.

As predicate, we discussed your employment agreement and we apparently disagree as to its applicability to this situation. Therefore, in view of that disagreement, you have offered, for a fee of \$250,000.00 (two-hundred and fifty thousand dollars) paid over two years, the following assistance:

1. To sign the declaration for the patent applications, if after reading the applications you feel you can;
2. To help prevent other companies from invalidating the patent or otherwise substantively interfering with the prosecution of the patents;
3. To provide expertise in helping clear up any counterclaims and making the application as impregnable as possible; and
4. To generally cooperate in the prosecution process.

Both Brocade and Mr. Gunawardena agree that neither party desires to induce the other to perform any act that might be subjectively construed as dishonest or unethical.

Wong, Cabello, Lutsch, Rutherford & Brucculeri, P.C.

20333 SH 249 • Suite 600 • Houston, Texas 77070
832.446.2400 • 832.446.2424 Fax • www.CounselIP.com

Dilip Gunawardena
April 17, 2002
Page 2

While I have written the initial draft of this letter, I have spoken with you and incorporated your precise words as best I could. You are, of course, free to edit this and return it to me. I understand that your offer is binary and that you do not desire to negotiate. In summary, you would like a yes or no answer.

Very truly yours,

A handwritten signature in dark ink, consisting of a large, stylized 'L' followed by a horizontal stroke and a small upward flick at the end.

Lou Brucculeri

Cc: Brocade Law Department



Counselors in Intellectual Property

Lou Brucculeri
Direct: 832-446-2415
lbrucculeri@counselip.com

May 10, 2002

Dilip Gunawardena
872 Newport Circle
Redwood Shores, CA 94065-1915

VIA FEDEX

Re: Letter Agreement

Dear Mr. Gunawardena:

I have communicated with the appropriate authorities at Brocade regarding your offer to cooperate for \$250,000.00, as specified in my letter of April 17. As we have discussed, this situation is highly irregular, especially considering your obligations under your employment agreement with Brocade, which require that you render this assistance. Nevertheless, it is our strong preference to have you participate in the prosecution of the patents. Therefore, I have the following proposals for you.

First, I hope that seeing the applications will encourage you to participate, so I am attaching copies of the two relevant applications. PLEASE NOTE: As I have discussed with you, These applications are Brocade confidential information and your use and disclosure of the is subject to an agreement of confidentiality that you have already executed (your employment agreement). Please treat them accordingly.

Second, assuming you are willing to participate, please review these applications and, if you have any comments, please provide us with these comments as soon as possible. Since these applications share a common specification, you may completely read all the materials simply by reading the entirety of one application and the abstract and claims of the other. If you have any questions or comments about these instructions or the applications, please let me know.

Third, I am also attaching declaration and assignment papers for you to sign if, after reviewing the applications, you believe it is appropriate. If you will not sign the declaration and assignment papers for any reason please let me know by using the attached form and enclosed mailing materials.

Wong, Cabello, Lutsch, Rutherford & Brucculeri, P.C.

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832.446.2400 • 832.446.2424 Fax • www.CounselIP.com

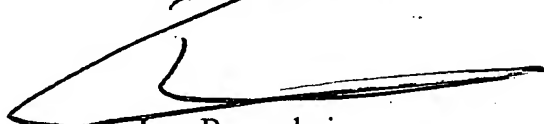
Dilip Gunawardena
May 10, 2002
Page 2

Finally, I am authorized to offer you compensation for your help as follows: For your full cooperation regarding the subject patent applications, Brocade will pay you 125% of your normal consulting rate up to a maximum rate of \$200 per hour, and a maximum total compensation of \$2000.

Ultimately, time is of the essence here. It is very important that you review the patent applications and sign the declaration and assignment papers within the next two weeks. You are in fact obligated to provide us with this very reasonable assistance under your employment agreement with Brocade, and the compensation we are offering to you to do this is very reasonable under the circumstances. If we do not receive your agreement to do this work for the amount we have offered as well as your completed declaration and assignment forms within 2 weeks, we will assume that you are refusing to sign and will proceed accordingly.

If you have any questions, please don't hesitate to call.

Very truly yours,



Lou Brucculeri

/kc

Enclosures

Patent application 112-0019US (w/Declaration and Assignment)

Patent application 112-0039US (w/Declaration and Assignment)

cc: Brocade Law Department (w/o enclosures)

Dilip Gunawardena
May 10, 2002

Response of Dilip Gunawardena

Please check any of the following that apply and provide your reasons in the space provided. Please use additional sheets if necessary.

☐ I cannot or will not sign the declaration for the following reasons:

☐ I cannot or will not sign the assignment for the following reasons:

☐ I do not accept Brocade's compensation offer as described in the attached letter (for my cooperation with the subject patent applications, to pay me 125% of my normal consulting rate up to a maximum rate of \$200 per hour, and a maximum total compensation of \$2000).

☐ I accept Brocade's compensation offer as described in the attached letter and I am prepared to fully cooperate regarding the prosecution of the subject patents.